

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ANTONIO F. CARSON #193689,

Plaintiff,

Case No. 2:07-cv-45

v.

Honorable Robert Holmes Bell

GERALD RILEY, et al.,

Defendants.

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OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S

REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge on February 20, 2008. The Report and Recommendation was duly served on the parties. The Court received objections from Defendants. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

In their objections, Defendants contend that the Magistrate Judge erred in his recommendation. Defendants state that *Jones v. Bock*, 127 S. Ct. 910 (2007) only requires them to raise the issue of exhaustion, and that they are not required to prove that Plaintiff failed to exhaust. Defendants are mistaken. Defendants must come forward with evidence showing that Plaintiff did not file any grievances exhausting his claims, such as a grievance inquiry report or an affidavit of the party responsible for searching the record. The failure to provide such support in a motion for summary judgment requires the denial of any request for dismissal on the basis of exhaustion.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (docket #21) is approved and adopted as the opinion of the court.

IT IS FURTHER ORDERED that Defendants' motion to dismiss (docket #8) is DENIED.

Date: March 18, 2008

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE